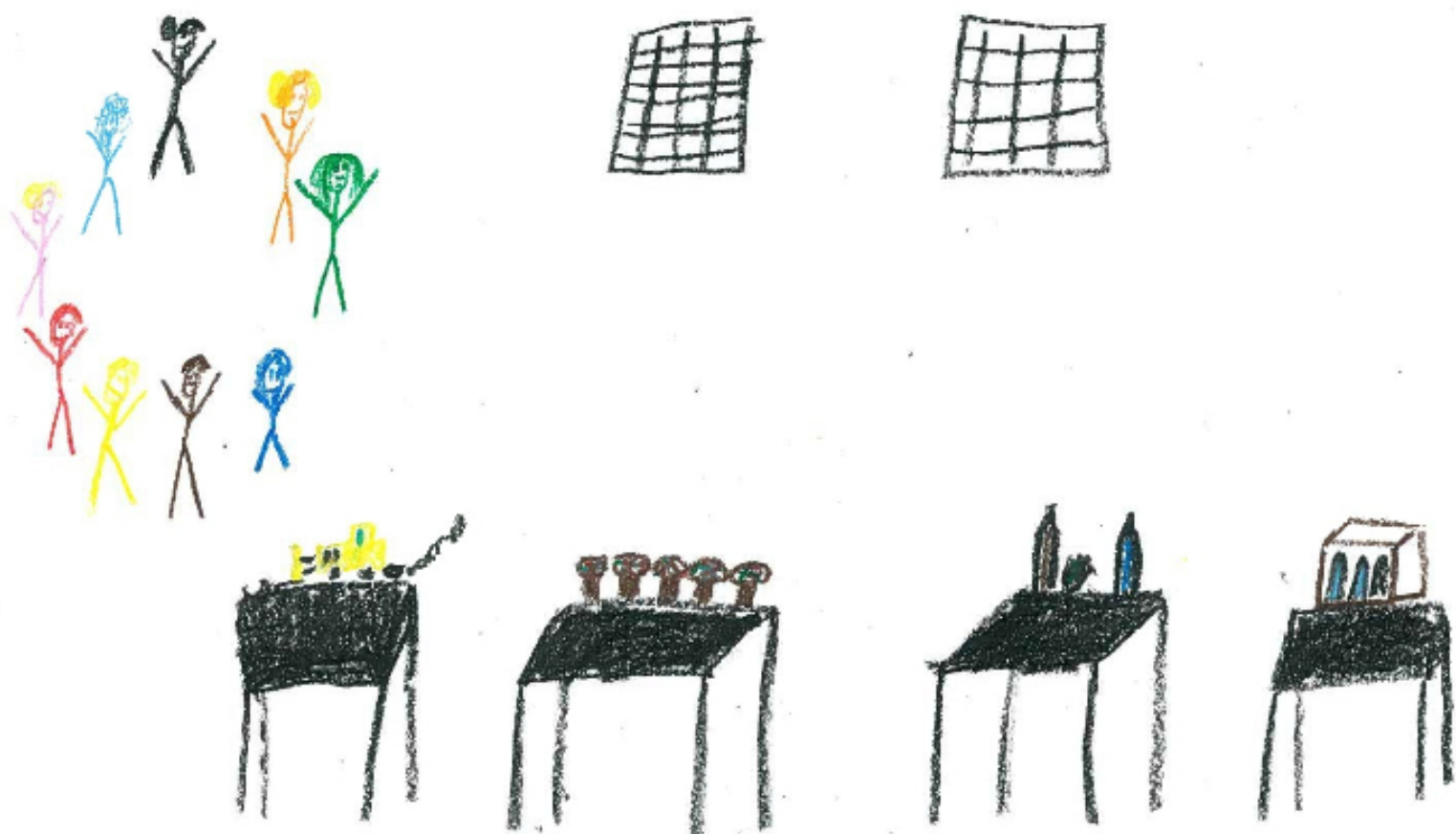




European Journal of Parental Imprisonment

Alternative care and parental imprisonment: Perspectives and interventions to support children





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*Alternative care and parental imprisonment:
Perspectives and interventions to support children*
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10-year-old boy, Germany

Children of Prisoners Europe (COPE) is a pan-European network of non-profit organisations working on behalf of children separated from an imprisoned parent. The network encourages innovative perspectives and practices to ensure that children with an imprisoned parent fully enjoy their rights under the UN Convention on the Rights of the Child and the EU Charter of Fundamental Rights, and that action is taken to enable their well-being and development.

The European Journal of Parental Imprisonment is a publication that seeks to broaden the study of issues relevant to children affected by parental incarceration and meet a burgeoning interest in the development, implementation and evolution of entitlements, policies and practices that promote their well-being. With a view to fostering new perspectives for children with imprisoned parents, the journal features contributions by eminent scholars and experts in the fields of child rights, child welfare, criminal and social justice, psychology, penal affairs and other disciplines; published articles do not necessarily represent COPE's opinions. Selected articles are editorial screened but not peer-reviewed. The editors are committed to reasoned ideological diversity and welcome suggestions for special issues and contributions.

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The rights of the child at the intersection of alternative care and parental imprisonment

Rachel Brett
COPE President

The question of intersections between children being in alternative care and them having a parent in prison is an under-considered and under-researched area. As identified by Silvia Zega, the UN General Assembly recognised the intersection between the two issues as early as 2009 in the Guidelines on Alternative Care for Children, developed following the UN Committee on the Rights of the Child's Day of General Discussion (DGD) on that subject. In September 2021, the Committee held a further DGD on Children's Rights and Alternative Care. Despite having had a DGD on Children of Incarcerated Parents in the meanwhile (2011), there has been little attention to the intersections between the two issues.

As the article by Eurochild highlights, most children in alternative care are not orphans but have at least one living parent. They rightly point out that it is, therefore, crucial to identify why children need alternative care and to seek to address these issues, in particular by taking social and economic measures to strengthen families. This analysis flags two elements where the questions of alternative care and of children with one or both parents in prison meet. First, some of the same underlying causes can lead to parental imprisonment and secondly, detaining or imprisoning a parent can lead to the child being in need of alternative care. Thus, strengthening the support to families is a good preventive measure. However, in the specific case of parents involved with the criminal justice system, there is the additional issue of detention or imprisonment in of parental care. Yet as identified custodial measures for parents to avoid the need for alternative have to be designed and executed to provide and care for their



Another linkage between the two Silvia Zega and Ben Raikes) is also about the lived experience of each the overlapping group (i.e., children in alternative care who have a parent in prison), including the experience of different kinds of alternative care, the maintenance of links with the parent and of the long-term impact of different kinds of alternative care. Furthermore, the need to ensure adequate support for kinship carers is recognised by those concerned for both groups of children.

One of the ongoing areas of concern for those working with children who have a parent in prison is maintaining the contact between child and imprisoned parent, which is generally beneficial for the child. This can be difficult even when the child is cared for by the other parent, but, as identified by Ben Raikes, can be further complicated if there is a lack of information for the child's carer that the parent is in prison (less likely in the case of kinship carers), or of a judgmental attitude towards the imprisoned parent (more common in the case of imprisoned mothers than fathers). The Convention on the Rights of the Child is clear that the child has a right to maintain a relationship with a parent from whom they are separated unless it is not in their best interests. However, this begs the question of who decides what is in the child's best interests and on what basis, and to what extent the views of the child are taken into account¹.

Silvia Zega points out that the Inter-American children's and human rights systems are more advanced than most in identifying some of the key areas that need to be addressed when a parent is detained or imprisoned, though, with the notable exception of positive developments in Argentina, the practice in the region is lagging. The European Court of Human Rights has also found violations of the right

¹ See Children of Prisoners Europe. (2018). The child's best interests: From theory to practice when a parent is in conflict with the law. European Journal for Parental Imprisonment, 8. Available at https://childrenofprisoners.eu/wp-content/uploads/2020/06/EJPI_2019-ENGLISH.pdf

to family life (Article 8 of the European Convention on Human Rights) – see the article by Nuala Mole and Samantha Sloan in the 2020 edition of this Journal² – when children are not adequately considered or provided for when a parent is in conflict with the law, or when children are not able to maintain contact with their imprisoned parent. The Council of Europe *Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*³ has been a breakthrough for this region but implementation has a long way to go.

Laurel Townhead points out that the Guidelines on Alternative Care for Children strongly encourage that children in alternative care should be reunited with their parent(s). This will be harder if the relationship between child and parent has not been maintained during the parent's detention or imprisonment. Interestingly, this specific situation has been addressed in one European Court of Human Rights case, *Haddad v Spain*⁴ where the Court found that the State had been responsible for the breakdown in contact between the detained father and his daughter and had failed in its positive obligation to take measures to re-establish that contact, thus violating Article 8.

Laurel Townhead identifies steps that should be taken by judicial and other authorities when a parent or carer is detained or imprisoned, both in the short and longer term, including the presumption against separating child and parent, and in favour of maintaining contact, and of reunification. Again, too little attention has been given to the Guidelines on Alternative Care for Children when considering the situation of children of incarcerated parents, including their specific provisions for this group. It is a timely reminder as more attention is rightly given to the overuse of alternative, especially institutional, care.

A particular challenge in relation to children of incarcerated parents is that judicial authorities tend to overlook the situation, or even the existence, of affected children. Some key points for consideration by judicial and other authorities are, therefore:

- Identifying whether there are children who will be affected by the detention or sentencing of an adult or adolescent parent or carer;
- If so, considering what pre-trial or sentencing measures will affect the child least, taking account also of the child's views;
- If the measures will require alternative care arrangements for the child, ensuring that these are put in place, and that the carer will have adequate financial and, if necessary, other support;
- Ensuring that there are arrangements for continuing contact between child and detained/imprisoned parent unless it is not in their best interests (taking account of the views of the child);
- Having a system for oversight/review of caring and contact arrangements since the needs and wishes may change over time, including taking into account the views of the incarcerated parent;
- Ensuring that any change of detention/prison placement is communicated to the child's carer.

However, there is also the need for those providing alternative care to be alert to the fact that the child may have an imprisoned parent, and to take appropriate steps to maintain and support the child-parent bond.

² Children of Prisoners Europe. (2020). Perspectives on keeping connected during a pandemic: Challenges to child rights and well-being. European Journal for Parental Imprisonment, 9. Available at https://childrenofprisoners.eu/wp-content/uploads/2021/05/EJPI_2020-ENGLISH_COPE.pdf

³ Available at https://childrenofprisoners.eu/wp-content/uploads/2019/12/CoE_Rec20185.pdf

⁴ *Haddad v Spain* (no. 16572/17) 18 June 2019



Children in alternative care in the European context

Across Europe, hundreds of thousands of children are growing up in large-scale, segregated institutional care settings. There is significant documented evidence of the damage institutional care has on children's development¹. For more than a year and a half, the COVID-19 pandemic has exacerbated existing fragilities for the lives and care of children growing up in alternative care systems, which is accounted well elsewhere². As part of the Eurochild Secretariat team, Zuzana Konradova and Ciaran O'Donnell lead Europe's largest children's rights network to advocate for reforming child protection systems towards family-and community-based care, including strengthening families. This work involves a blend of building the evidence base, facilitating exchange and learning, and leveraging EU influence for policy change at national level. Earlier this year, the European Child Guarantee was launched alongside a new *EU Strategy on the Rights of the Child*. That makes this an unprecedented time for the European Union and countries across Europe to bring about positive change for children and families, and we are committed to seize every opportunity available. In this article, we set out a number of ways that we as Eurochild are working within this at-times complicated EU context to prevent children entering alternative care.

An overview of Eurochild

With almost two hundred national organisations active in thirty-four European countries, Eurochild is the largest network of children's rights organisations in Europe. We are a network of organisations and individuals working *with* and *for* children throughout Europe, striving for a society that respects the rights of children. The United Nations Convention on the Rights of the Child (UNCRC) underpins our work.

We campaign against child poverty and advocate for systemic reforms that address structural

Zuzana Konradova & Ciaran O'Donnell

Thematic Coordinator, Children in Alternative Care & Policy and Project Officer, Eurochild

inequalities by calling for the prioritisation of public investment in education, healthcare, housing, family support and childcare. We passionately believe that children are experts in their own lives and must be listened to in decisions affecting them. For this reason, we work to protect children's right to participate in all decisions that will impact them.

Engaging children and young people with care experience remains a priority in our work. Eurochild has established relationships with youth care leavers associations throughout Europe, including within our membership (for example in Czechia, Ireland, Romania and Wales, and SOS Children's Villages International) and globally³. We are experienced in connecting care-experienced advocates together and with decision-makers⁴. Our experiences consulting with children⁵ and championing participative democracy for children and young people⁶ are also key here.

Simply put, this is how we "do" our work:

- We influence relevant EU legislation, policy and funding programmes so that they have a positive impact on policies and practices nationally and sub-nationally.
- We build the capacity of member organisations to strengthen the grassroots child rights movements and to enable members to influence and harness relevant EU legislation, policies and funding in their advocacy towards national (and sub-national) governments.
- We involve children and young people directly in our work and advocate for them to participate in decisions that affect them.

Deinstitutionalisation and the prevention of separation from family care

There are several reasons why children enter alternative care. However, being an orphan is rarely the case. As documented by a great deal of

1 See van Ijzendoorn, M et al. (2020). Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development, The Lancet. Available at [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(19\)30399-2/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(19)30399-2/fulltext)

2 See Better Care Network & UNICEF. (2020) It's time for care: Prioritizing quality care for children during the COVID-19 pandemic - Challenges, opportunities and an agenda for action. Available at https://bettercarenetwork.org/sites/default/files/2020-12/UNICEF_Better_care_network_1222_DIGITAL.pdf

3 <http://careleaverscommunity.org/assets/files/Declaration-UC-Updated-New2.3.pdf>

4 <https://www.eurochild.org/news/eurochild-shines-the-light-on-aftercare-for-care-leavers-across-europe/>

5 <https://www.eurochild.org/resource/our-europe-our-rights-our-future/>

6 <https://www.eurochild.org/event/celebrating-30-years-of-the-convention-on-the-rights-of-the-child/>

research, most of these children have both living parents. The reasons why they are separated from their families predominantly include: poverty, neglect, violence, abuse and access to education. Children with disabilities and of ethnic or migrant's origin are overrepresented in out-of-home care in Europe – signifying structural challenges in European countries that prevent these children from being fully included in our societies.

Once separated from their biological families, children growing up in alternative care are more likely to be exposed to additional risks. This is not to say that all forms of alternative care carry with them the same levels of risk to a child's healthy development. We know that residential and institutional care⁷ are often not equipped to provide children with the individualised care they need for their healthy development and social inclusion⁸. However, family-based care, such as foster care or kinship care (provided by relatives or other caregivers close to the family and known to the child), can provide children with stable and safe relationships involving caring adults. Such relationships are far more likely to be created in a family environment where responsible carers, be they related to the child or not, are more likely to be able to provide individualised care adapted for the child's needs, thus helping them to thrive.

When we talk about children in alternative care at a European level, we are often talking about ending institutional care, or deinstitutionalisation (henceforth DI). DI should not be understood as

Deinstitutionalisation is the process of comprehensively transforming national child protection systems to respond to the individual needs and circumstances of each child.

simply the closure of institutions for children. It is the process of comprehensively transforming national child protection systems, including introducing preventive measures to support and strengthen families, as well as a range of alternative care solutions which can respond to the individual needs and circumstances of each child⁹. DI needs to be contextualised within a broad understanding of healthcare, education and social welfare systems which, if designed well, ensure all families – in particular the most vulnerable – are supported in their child-rearing responsibilities.

There is no one-size-fits-all approach to deinstitutionalisation. Reforms must be sensitive to the specific historical and cultural context of each country or region. Actual closure of institutions can only be achieved once a range of other services are in place such as:

- Ensuring universal public services are accessible and affordable and do not discriminate against vulnerable children and families to prevent family separation.
- Offering more services in the community such as parenting support, mental health services or respite care for families with children with disabilities.
- Developing specific 'gatekeeping' interventions designed to prevent unnecessary separation of children from their families such as family group conferencing or mediation.
- Expanding the availability of family-based alternative care including foster care and kinship care for all children including children with disabilities and children with a migration background.

Prevention and/or family strengthening programmes as well as re-unification must be an inseparable part of every child protection system and reforms. When we speak with governments and policymakers responsible for funding and programming across Europe, we point to the above four components as being core to achieving DI. Later, we share some good practices from Eurochild's members working to achieve DI across Europe.

⁷ In the context of alternative care, institutional care is a form of residential care where residents are isolated from the broader community and/or compelled to live together; residents do not have sufficient control over their lives and over decisions that affect them; the requirements of the organisation itself tend to take precedence over the residents' individualised needs. Residential care, on the other hand, is a collective living arrangement where children are looked after by adults who are paid to undertake this function. This could include a variety of services including homes offering temporary shelter overnight where parents do not stay with the child/children. All forms of residential care are included in the concept of alternative care. Source: Better Care Network and UNICEF. (2009). Manual for the Measurement of Indicators for Children in Formal Care. Better Care Network and UNICEF, New York. Available at <https://bettercarenetwork.org/sites/default/files/Manual%20for%20the%20Measurement%20of%20Indicators%20for%20Children%20in%20Formal%20Care.pdf>

⁸ The most recent synthesis of evidence on the effects of growing up in institutions on a child's development was released last year by van Ijzendoorn, M et al. (2020). Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development. *The Lancet*. Available at [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(19\)30399-2/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(19)30399-2/fulltext)

⁹ Opening Doors for Europe's Children. (2017). Deinstitutionalisation of Europe's Children: Questions and Answers. Available at <https://www.eurochild.org/uploads/2021/02/Opening-Doors-QA.pdf>

So, what's happening at the European level?

Despite several progressive efforts, there are still approximately 18 million children¹⁰ at risk of poverty and social exclusion in the European Union. Furthermore, almost 900,000 children are in alternative care in the EU and the UK.¹¹ This includes over 317,000 children who are growing up in residential care. Given the impact of the COVID-19 pandemic, there has been a heightened risk for children and families in precarious situations caused by financial pressures, with UNICEF and Save the Children estimating the number of children globally living in poor households to reach more than 725 million¹². Most recently, available data from Eurostat reveals that the EU average child poverty rate has increased by almost two percentage points, from 22.5 per cent in 2019 to 24.2 per cent in 2020¹³. The link between poverty and alternative care is long established. We know that children growing up at risk of poverty or social exclusion have a higher likelihood of entering into the alternative care system. As there is a link between poverty and alternative care, we can also assume that the number of children in alternative care may grow as a result of the COVID-19 pandemic.

The need for supporting vulnerable families and children, including children in alternative care, has been recognised by the European Union's policies and funding frameworks. More specifically, the Commission's Recommendation of 2013 on

Investing in Children¹⁴ sets the targets for breaking the cycle of disadvantage for children. Moreover, over the past ten years, the European Commission has championed to promote deinstitutionalisation as well as put pressure on Member States to reform their care systems for both adults and children. The countries that showed the most consistent changes for both children and adults were, for the most part, those that have benefited from European structural funds¹⁵.

The latest leadership of the European Commission (2019–2024) has set high ambitions towards children's rights in its political manifesto. As a result, in 2021, the breakthrough strategic framework *The EU Strategy on the Rights of the Child* was adopted, aiming to better protect all children, to help ensure their rights and to place them right at the centre of EU policy making. The funding instrument that is directly linked to the new Strategy is the *Council Recommendation establishing a European Child Guarantee*¹⁶. The European Child Guarantee should address the needs of most vulnerable children including children in alternative, especially institutional, care and children in precarious family situations by guaranteeing them access to five main services: nutrition; health; early childhood education and care; education, and housing. According to the *European Pillar of Social Rights Action Plan*, these instruments should help to reduce the number of children at risk of poverty or social exclusion by at least 5 million children¹⁷.

However, the most unprecedented response to the pandemic's impact is the Recovery and Resilience Facility that was launched in 2020 and provides more than 700 billion euros to

10 EU Alliance for Investing in Children. (2021). EU Alliance for Investing in Children welcomes the EPSCO Council adoption of the Council Recommendation establishing the European Child Guarantee. Available at <http://www.alliance4investinginchildren.eu/eu-alliance-for-investing-in-children-welcomes-the-epsco-council-adoption-of-the-council-recommendation-establishing-the-european-child-guarantee/>

11 According to Eurochild and UNICEF's DataCare project mapping study of alternative care data systems, there are an estimated 758,018 children in alternative care in the EU-27 Member States, except Austria due to lack of 'stock data' of children; and 105,217 children in the UK. Source: Eurochild and UNICEF. (2021). Better Data for Better Child Protection Systems in Europe: Mapping how data on children in alternative care are collected, analysed, and published across 28 European countries. Available at <https://www.eurochild.org/resource/better-data-for-better-child-protection-systems-in-europe/>

12 United Nations Children's Fund, Save the Children. (2020). Children in monetary poor households and COVID-19: Technical Note. Available at <https://data.unicef.org/wp-content/uploads/2020/05/Children-in-monetary-poor-households-and-COVID-19-TechnicalNote-November-Revision.pdf>

13 Eurostat (2021). 1 in 4 children in the EU at risk of poverty or social exclusion. Products Eurostat News. Available at <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20211028-1>

14 2013/112/EU: Commission Recommendation of 20 February 2013 Investing in children: breaking the cycle of disadvantage. EUR-Lex - 32013H0112 – EN. Available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013H0112>

15 J. Šiška and J. Beadle-Brown. (2020). Transition from Institutional Care to Community-Based Services in 27 EU Member States: Final report. *Research report for the European Expert Group on Transition from Institutional to Community-based Care*. Available at <https://deinstitutionalisationdotcom.files.wordpress.com/2020/05/eeeg-di-report-2020-1.pdf>

16 Information on The EU Strategy on the Rights of the Child and the European Child Guarantee is available here https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en. You can also read the full Council Recommendation (EU) 2021/1004 of 14 June 2021 to establish a European Child Guarantee here <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021H1004>.

17 European Commission. (2021). The European Pillar of Social Rights Action Plan. European Commission, Brussels. Available at https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-action-plan_en

Member States to mitigate the economic and social impact of the coronavirus pandemic and make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions. Countries have put forward their National Recovery and Resilience Plans to implement the reforms at national level. Unfortunately, the social fabric and children's wellbeing has not been appropriately considered in the National Recovery and Resilience Plans, as assessed by Eurochild and its members across 16 countries in early 2021¹⁸. Moreover, children's issues, such as worsening of mental health, have been mostly insufficiently covered by the plans despite the detrimental impact of the pandemic. Most of the plans have addressed the accessibility of digital education for all children, including those in marginalised circumstances and children with disabilities.

How are we in Eurochild working to prevent family separation for children?

Working with our members

Eurochild established its thematic working group on children in alternative care (CiAC) in 2008. Today we work with more than fifty organisations across twenty-five countries. Over the years we have convened key stakeholders, created spaces for exchange and learning and relentlessly advocated for ending institutional care and reforming child protection. In response to the COVID-19 pandemic, our "Growing up in lockdown: Europe's children in the age of COVID-19" report¹⁹ features perspectives from twenty-five countries that examined the situation of children, including children in alternative care during the pandemic. These perspectives were shared with European Commission policy officials and national line ministries with the aim to shape their post-pandemic plans.

Through re-granting, tailored capacity-building and technical assistance, we have successfully supported our members active at national level on advocacy and awareness-raising for child

protection reforms²⁰. Our members in Croatia, Greece, Poland and Turkey have benefited from the technical assistance in the field of deinstitutionalisation supported by the Martin James Foundation. Eurochild has also developed a specific capacity building offer and engages an active community of child rights defenders across twenty-five countries. We assess emerging needs and priorities of NGOs and organise capacity-building webinars covering a variety of topics, from advocacy responses to COVID-19, to strategies to prevent family separation.

Leveraging our influence with the EU to catalyse deinstitutionalisation reform



To ensure that children's rights are visible in all EU policies, we work between the national and the European level in close collaboration with our national members, civil society partners – such as with other leading child rights organisations in the EU Alliance for investing in Children²¹

and European Expert Group on transition from institutional to community-based care²² – and with EU institutions. This type of coalition- and consensus-building has proven invaluable to raising deinstitutionalisation on the European agenda.

Eurochild are closely monitoring and influencing a multitude of policy developments and funding opportunities relevant within and without the European Union – from the European Multiannual Financial Framework 2021-2027, to the Recovery Plans, the European Child Guarantee Initiative, the *EU Strategy on the Rights of the Child* and the *European Strategy for the Rights of People with Disabilities*. These policy frameworks have the potential to substantially improve children and family well-being, but they need to be owned at national and local levels and translated into effective measures. Eurochild and our members are playing a key role in holding institutions accountable and pushing for meaningful reforms.

Over the past ten years, Eurochild has chaired and contributed to the Expert Group on the Transition from Institutional to Community-based care²³, which plays a pivotal role in raising awareness and

¹⁸ Eurochild. (2021). Children's wellbeing ignored in vast majority of National Recovery and Resilience Plans. Available at <https://www.eurochild.org/news/childrens-wellbeing-ignored-in-vast-majority-of-national-recovery-and-resilience-plans>

¹⁹ <https://eurochild.org/uploads/2020/12/2020-Eurochild-Semester-Report.pdf>

²⁰ <https://www.eurochild.org/event/creating-last-ing-change-for-children-in-alternative-care/>

²¹ <http://www.alliance4investinginchildren.eu/about/>

²² <https://deinstitutionalisation.com/>

²³ <https://deinstitutionalisation.com/>

influencing EU policy and spending in the area of child protection and deinstitutionalisation. In a recent Open Meeting with national authorities and European Commission officials, we discussed the Recovery and Resilience Facility and its potential to scaffold deinstitutionalisation reform in the recovery from the COVID-19 pandemic.

Raising Awareness and disseminating good practices

In 2021, we have hosted several events, such as “Global & European Trends of Deinstitutionalisation for Children” at the German Child & Youth Welfare Congress in May. It provided a space for leading experts and practitioners to discuss developments towards family-based care and reflect on research, experiences and practices in the EU and globally²⁴.

In June we shared the good practices of Eurochild’s technical assistance partners in the field of deinstitutionalisation. Eurochild members from Greece, Croatia and Poland had highlighted the good practices that ensure keeping families together, foster care for all children as well as adequate support for young people ageing out of care²⁵.

Moreover, we teamed up with other international civil society allies, from Hope and Homes for Children, Lumos and SOS Children’s Villages, to convene a session at the EU Fundamental Rights Forum 2021²⁶. During our session, “Fulfilling social rights for children and families”, we explored how to strengthen the child protection and welfare systems to realise the social rights of children and families and prevent the use of alternative care, in particular institutionalisation. In the first part, recent trends of deinstitutionalisation, drivers of family separation and placement in alternative care were presented. It included lessons learnt from the COVID-19 pandemic and challenges faced by disadvantaged groups. The second part

focused on how to strengthen childcare and social protection systems by sharing practical examples including use of EU funds as well as the Child Guarantee²⁷.

Building the evidence base – DataCare

Despite children in alternative care being among the most vulnerable – with children with care experience often over-represented in negative health, education, social and employment outcomes – there is in fact extremely little data available at a European level. Despite policy commitments by the European Union and Member States to the deinstitutionalisation of children in alternative care, there are a lack of relevant indicators to measure progress and reporting obligation at international level. Consequentially, we simply do not know how these children are doing in Europe today.

With this clear gap in sight, Eurochild and UNICEF’s Europe and Central Asia Regional Office created the DataCare project. This joint initiative has mapped alternative care data systems across the twenty-seven Member States of the EU and the United Kingdom. We want to help the EU progress towards a more transparent, common approach to data collection and reporting. Our findings and conclusions are drawn from the analysis of responses from over fifty national experts across the region in twenty-three countries, together with data and information gathered by our central research team for the remaining five countries²⁸.

Our findings demonstrate that countries in the EU and the UK already collect adequate data for children in alternative care at national level that, with aggregation to five core international categories of alternative care (Alternative care; Formal family-based care; Foster care; Formal kinship care; and Residential care) can be used to establish comparable indicators on residential care and three other relevant and interlinked indicators²⁹:

24 The event featured international experts such as Professor Charlie Zeanah, co-author in the recent Lancet Commission on deinstitutionalisation and the ‘Romanian Orphanage Study’ that involved the first controlled trial on the effects of institutional care on children’s development. Find more information here <https://www.eurochild.org/event/global-european-trends-of-deinstitutionalisation-for-children/>

25 Creating lasting change for children in alternative care: Lessons from Croatia, Poland and Greece. Available at <https://www.eurochild.org/event/creating-lasting-change-for-children-in-alternative-care/>

26 <https://fundamentalrightsforum.eu/news/posts/rightsforum21-programme-online-and-registrations-open/>

27 Eurochild. (2021). Why is family support needed in post-pandemic era?. Available at https://www.eurochild.org/news/why-is-family-support-needed-in-post-pandemic-era/?utm_source=email&utm_campaign=November%20InfoFlash&utm_medium=email

28 Countries included: Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden, UK. We gathered information ourselves on Austria, Estonia, Latvia, Luxembourg and Slovakia.

29 An overview of data for these four indicators, and all source material underpinning them, is presented in Eurochild and UNICEF. (2021). Better Data for Better Child Protection Systems in Europe: Mapping how data on children in alternative care is collected,

1. The rate of children aged 0-17 in alternative care at a specific point in time (per 100,000)
2. The rate of children aged 0-17 in residential care at a specific point in time (per 100,000)
3. The rate of children aged 0-17 in formal family-based care at a specific point in time (per 100,000)
4. The percentage of children aged 0-17 in residential care (of the total number of children aged 0-17 in alternative care at a specific point in time)

It is promising to learn that more comparable data can be established across the EU with increased political commitment – something Eurochild and UNICEF are now campaigning for! However, our findings also show that progress in deinstitutionalisation is uneven across the region. If Member States and the EU can utilise these proposed indicators to capture more comparable data on children in alternative care, it can provide insight into care conditions, in turn enabling effective policy implementation, evidencing the factors that hamper progress, and can support investments required to accelerate change. In essence, better data will lead to more informed decision-making in policy and programme funding, which can in turn contribute to better outcomes for children in alternative care³⁰.

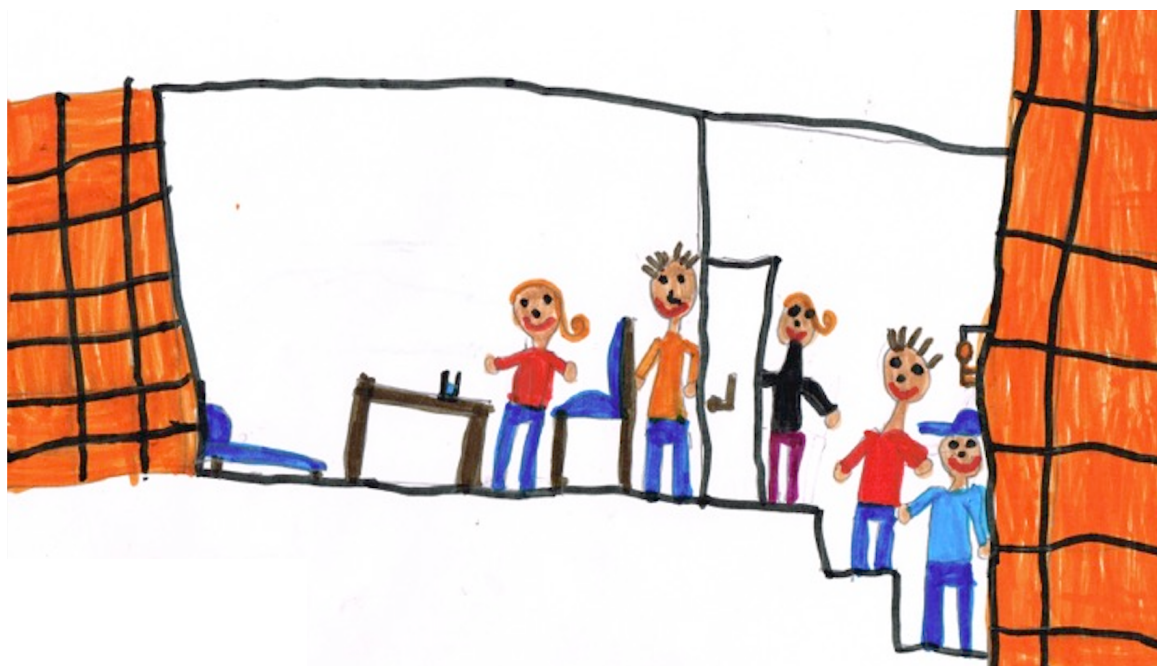
analysed, and published across 28 European countries. Available at <https://www.eurochild.org/resource/better-data-for-better-child-protection-systems-in-europe/>

30 Eurochild and UNICEF. (2020). The DataCare project Logic Model. Available at https://eurochild.org/uploads/2020/11/Data-Care_Logic_Model_Eurochild-UNICEF.pdf

Conclusion

The COVID-19 pandemic worsened the living conditions of many families already struggling to make ends meet. As we know, family is the best environment for every child to thrive. Therefore, it is crucial to support families as well as develop a range of services to prevent children from being separated from their families. Recent EU policies and funding instruments, such as those outlined above, provide a unique and pivotal opportunity to address inequalities that underpin the separation of children from their families through child poverty and social exclusion.

However, with over 317,000 children still growing up in residential care, and with the risk of increased family separation due to rising rates of poverty in Europe only starting to be laid bare by recent data, our work is far from over. Deinstitutionalisation is core to preventing separation of children from their families. It requires active involvement of all relevant stakeholders: civil society, academia and those who we are targeting by these efforts: children. This is an unprecedented time for the European Union and countries across Europe to bring about positive change for children and families and we in Eurochild, together with our members across the region, are committed to seize every opportunity available.



A parent in prison, their child in alternative care: A perspective from England & Wales

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It is now well recognised in research literature that the imprisonment of a parent can have a negative impact on many aspects of the well-being of affected children. If a father is imprisoned, the likelihood is that his children will continue to reside with their mother for the duration of his sentence, which at least provides some continuity and stability. By contrast, when a mother is sentenced, it is relatively rare for her children to be cared for by their father, and consequently they face far more disruption to their lives. Children with imprisoned mothers are likely to be accommodated by grandparents or female kinship carers or to be received into State care. There is very little research about the lived experience of children who are cared for by their grandparents or other kinship carers while their parent is in prison. The research on children with imprisoned parents in State care is almost non-existent. This paper will focus on England and Wales and will use evidence from the limited literature on this subject to suggest that it is likely that the impact of parental imprisonment is not sufficiently appreciated by those caring for children with imprisoned parents who are in State care. It will conclude that there needs to be much more focus on this issue to ensure the best support is provided to these children to reduce their chances of suffering negative impacts.

Since 1998, parental incarceration has been included as one of the ten key Adverse Childhood Experiences (ACEs) that children can face, with evidence to suggest that it increases the vulnerability of children to experiencing other ACEs¹. Recent estimates suggest that 312,000 children experience the imprisonment of a parent each year in England and Wales, which equates to 7 per cent of the school age population, with around 17,000 of those children being impacted by the imprisonment of their mother². It has been well established that having a parent in prison increases the vulnerability of children to experiencing poor outcomes in terms of mental

health³, social isolation, financial insecurity⁴, poor school attainment⁵ and in the case of boys with their father in prison, anti-social and offending behaviour⁶.

Children with imprisoned parents also have to deal with stigma. This stigma is likely to be felt particularly by children with imprisoned mothers since it is much rarer for a mother to be imprisoned than a father, and therefore much harder to explain it to others⁷. Children who are in kinship or State care experience stigma too⁸ and report being vulnerable to being negatively stereotyped⁹. Therefore, children with imprisoned parents in State care can have a double burden of stigma to contend with. Whilst acknowledging these negative outcomes can occur for children with imprisoned parents, it is essential to move beyond labelling them as victims, in recognition of the resilience that many children in this situation show in the face of adversity¹⁰. It is also important to be aware from the outset that for some families the imprisonment of a parent can come as a relief if the negative effects of their offending impacts directly on the family, for example in cases of domestic abuse.

3 Jones, A., Gallagher, B., Manby, M., Robertson, O., Schützwohl, M., Berman, A., Hirschfield, A., Ayre, L., Urban, M., Sharratt, K., Wainaina-Wozna, A., & University of Huddersfield School of Human and Health Sciences. (2013). *Children of prisoners: Interventions and mitigations to strengthen mental health*. University of Huddersfield: The School of Human and Health Sciences.

4 Weidberg, F. (2017). Giving children of imprisoned parents a voice. *Educational Psychology in Practice*, 33(4), 371-386.

5 Brown, E. (2020). School counselor conceptualizations of the needs of children of incarcerated parents. *Children and Youth Services Review*, 112.

6 Murray, J., & Farrington, D. P. (2005). Parental imprisonment: Effects on boys' antisocial behaviour and delinquency through the life-course. *Journal of Child Psychology and Psychiatry*, 46(12), 1269-1278.

7 Beresford, S. (2018). What about me? The impact on children when mothers are involved in the criminal justice system. Prison Reform Trust.

8 Farmer, E., Selwyn, J., & Meakings, S. (2013). 'Other children say you're not normal because you don't live with your parents'. Children's views of living with informal kinship carers: social networks, stigma and attachment to carers. *Child & Family Social Work*, 18(1), 25-34.

9 Blades R., Hart, D., Lea J., Willmott N., (2011) *Care a Stepping Stone to Custody?*, Prison Reform Trust.

10 Brookes, L. M. (2014). Bubbles, brick walls and connectivity: Families affected by parental imprisonment and their experiences of community-based support. PhD thesis, University of Central Lancashire.

1 Turney, K. (2018). Adverse childhood experiences among children of incarcerated parents. *Children and Youth Services Review*, 89, 218-225.

2 Kincaid S., Roberts M., & Kane E. (2019). *Children of Prisoners: Fixing a broken system*, Crest.

Families experiencing imprisonment should not be regarded as a homogenous group. Their lived experience is determined by their individual set of circumstances. As a long-standing researcher in this field based in the United States has observed, research has ‘tended to mask significant heterogeneity in children’s experiences ... this is not one monolithic group’¹¹. A particularly important factor, amongst others such as the offence and length of prison sentence, is whether the parent serving the prison sentence is a father or mother. Children and families who have a mother in prison have been referred to as a ‘marginalised’ group within an already marginalised group since women only make up around 5 per cent of the prison population, within a system designed predominantly for the needs of males¹².

If a mother is imprisoned, the disruption to her children is likely to be far greater than if it was a father. This is due to the stark statistic that only 5 per cent of children in England and Wales with a mother in prison stay in the same home that they were living in prior to her sentence^{13, 14}, meaning that at the time when they need support the most, they are likely to be moved away from their familiar surroundings and networks. This compares to 90 per cent of children with a father in prison remaining in the family home with their mother as primary carer¹⁵. By contrast, only 9 per cent of children with a mother in prison are cared for by their fathers, with 25 per cent believed to be cared for by a grandparent and a further 15 per cent looked after by another female relative¹⁶. This suggests that the other 51 per cent of children with mothers in prison are likely to be in State care, in foster placements or residential children’s homes. This equates to at least 8,670, just over half of the estimated 17,000 children who have a mother in prison. The actual number will be higher still to take account of families where an imprisoned

father is a primary carer and there are no other family members to care for his children whilst he is serving his sentence. However, we know very little about the lived experience of children with parents in prison who are ‘Looked After Children’ in England and Wales since there is a paucity of research about them.

Only 5 per cent of children in England and Wales with a mother in prison stay in the same home that they were living in prior to her sentence.

The most common reasons given for young people being cared for by the State are neglect and other types of abuse relating to substance misuse and domestic violence¹⁷. These headline issues may mask situations where parental imprisonment is a factor too. It is very important to recognise that children in care all have unique needs depending

on their experiences prior to coming into care¹⁸. Having one or more parents in prison is one such experience that needs to be considered. However, we do not know the extent to which parental imprisonment impacts on young people in care since it is rarely recorded, despite being a recognised Adverse Childhood Experience.

There have for a long time been calls for the numbers of children affected by parental imprisonment to be systematically recorded¹⁹ so that each local authority in England and Wales can develop a plan to ensure they are supported. Given the well-documented pressures and negative outcomes faced by children with imprisoned parents, a considerable number of these young people should fall under the definition of a “child in need” as defined by section 17 of The Children Act 1989, namely a child who needs “additional support from the local authority to meet their potential”²⁰. However, the provision of support under section 17 of The Children Act 1989 has not been as extensive as was originally envisaged²¹, meaning that the fact that children have an imprisoned parent or parents is rarely likely to trigger support by local authority social children’s work teams. Leeson & Morgan have

11 Adalist-Estrin, A. (2018). Responding to the need of children and families of the incarcerated: twelve guiding principles. In L. Gordon. (Ed.). *Contemporary research and analysis on the children of prisoners: Invisible children*, p. 102. Cambridge Scholars Publishers.

12 Beresford, S. (2018).

13 Caddle, D. & Crisp, D. (1997). *Imprisoned Women and Mothers*. Home Office, London.

14 Baroness Corston. (2007). *The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the Criminal Justice System*, Home Office, London.

15 Caddle, D. & Crisp, D. (1997).

16 Baroness Corston. (2007).

17 Farmer et al., 2013

18 Bullock, R., Courtney, M., Parker, R., Sinclair, I., Thoburn, J. (2006) ‘Can the corporate state parent?’, *Adoption & Fostering* 30(4), 6–19.

19 Murray, J. (2007). The cycle of punishment: Social exclusion of prisoners and their children. *Criminology & Criminal Justice*, 7(1), 55–81.

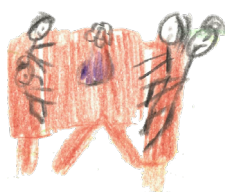
20 The Children Act, 1989. Available at <https://www.legislation.gov.uk/ukpga/1989/41/contents>

21 Cooper, J. (2021). In need of what? Section 17 Provision under the Children Act 1989, *Children and Society*, 00, 1–15.

recognised this gap in support and have argued that to categorise children with parents in prison living with their non imprisoned parent as young carers, in view of the emotional labour children are often required to perform in the wake of a parent's imprisonment, could be a non-stigmatising way of ensuring their needs are recognised and met²².

Only a "handful" of local authorities in England and Wales have developed plans to support children with a parent in prison²³. Significantly there is no mention of this group of children in the "Working Together to Safeguard Children"²⁴ document which sets out multi-agency duties in relation to safeguarding. This lack of official recognition of children affected by parental incarceration in child protection policy suggests that there is also little recognition of their needs relating to the imprisonment of their parent or parents when they are in State care.

Lord Farmer, in his influential report into the importance of family ties for female offenders cited above, highlighted evidence that suggested that many social workers had negative views in relation to imprisoned mothers, and placed a low priority on supporting them to have contact with their children during their prison sentences. He also reported that many mothers in prison assumed that they lost their right to ongoing contact with their children when they were sentenced. In addition to this he also expressed concern that imprisoned mothers were having their children removed "hastily" by social workers with "threadbare" legal assistance due to cuts in legal aid²⁵. The latter concern is currently being investigated by a review of these cases commissioned by the Chief Social Worker for England. Therefore, not only is there a concern about the fairness of the process which results in children coming into State care, but also about the support that social workers give to assisting their children to have ongoing contact in accordance with article 8 of the United Nations Convention on the Rights of the Child (UNCRC). Agencies



working with imprisoned mothers who gave evidence to the Farmer Review considered that there was not a consistent approach to deciding whether imprisoned mothers could have contact with their children, with one NGO considering that social workers did not think it was "worth the hassle entailed"²⁶.

Sometimes children with imprisoned parents will be residing with kinship carers but technically the children are in State care. This arrangement can mean that kinship carers receive a better level of financial and practical support. I have written elsewhere about how, when grandparents step in to provide support for their grandchildren while their parent is in prison, it is a lottery as to whether they are provided with support from their local social work team²⁷. Those caring for children with parents in prison will all have to navigate a number of sensitive issues specific to children who are affected by the incarceration of their parents. This is the case whether these carers are grandparents, other kinship carers, or those providing care acting as the "corporate parent" on behalf of the State in the guise of foster carers or those who work in residential children's homes.

The UK-based charity "Kinship"²⁸ sets out these challenges on their website. Firstly, they highlight the importance of providing children with an honest age-appropriate explanation of the fact that their parent is in prison. Failure to do this can lead to children finding out via social media or even taunts in the playground²⁹. If children are not given proper or accurate explanations, then they can experience ambiguous loss, where children are unclear about which adults are in their life and which are not, causing their whole perception of their world to become blurry and uncertain, potentially adding to their feelings of anxiety and diminishing their trust in the adults around them³⁰. To work

26 Lord Farmer. (2019). p.94.

27 Raikes, B. (2016) *Unsung Heroines: Celebrating the care provided by grandmothers for children with parents in prison*. *Probation Journal*, 63 (3), 320-330.

28 kinship.org.uk/for-kinship-carers/advice-and-support/looking-after-a-child-whose-parent-is-in-prison/ - accessed on 22 November 2021.

29 Lockwood, K., & Raikes, B. (2016). A difficult disclosure: The dilemmas faced by families affected by parental imprisonment regarding what information to share. In C. Reeves. (Ed.). *Experiencing Imprisonment: Research on the Experience of Living and Working in Carceral Institutions* (pp. 230-247). Taylor and Francis Inc.

30 Bocknek, E. L., Sanderson, J., & Britner, IV, P. A. (2009). Ambiguous loss and post-traumatic stress in school-age children of prisoners. *Journal of Child and Family Studies*. 18(3), 323-333.

22 Leeson, C., & Morgan J., (2019). Children with a parent in prison England and Wales: A hidden population of young carers. *Child Care in Practice*. p.1.

23 Kincaid et al. (2019). p.36.

24 H.M. Government. (2018). *Working Together to Safeguard Children*. Available at <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

25 Lord Farmer. (2019). *The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime*. Ministry of Justice, London. p.95.

sensitively with children with parents in prison, those providing them with support need to understand the concept of “disenfranchised grief”, namely the impact upon the children of having experienced a loss, which due to being stigmatised, they cannot share easily since it might be met with a negative response or bring shame upon them and their family³¹. The lack of attention given to the needs of children with parents in prison in social work policy suggests that a low priority is placed on equipping those who look after them to have these sensitive conversations through appropriate training.

Secondly the Kinship charity emphasises the importance of viewing the potentially challenging behaviour of young people with parents in prison in the context of the anguish of missing their parents and also worrying about their safety whilst they are in prison. If children are not given the opportunity to visit their parents in prison, they are prone to think the worst about the conditions in which they are held³². As highlighted earlier, social workers, foster carers and those working with children in residential settings may have negative ideas about the appropriateness of taking children to see their parents in prison. However, with careful preparation, using resources provided by NGOs, children can attend visits with realistic expectations in the face of rules and restrictions. Those working with children with parents in prison can be prone to allowing their instinctive negative thoughts about prison visits to obscure the importance of upholding the child’s right to contact with their parents under article 8 of the UNCRC. Likewise, they can easily underestimate the reassuring positive impact upon a child’s mental health of the child seeing that their parent is surviving their prison sentence and still able to communicate with them.

31 Worden, J. (2018). *Grief counselling and grief therapy: A handbook for the mental health practitioner* (Fifth ed.). Springer Publishing Company, LLC.

32 Jones et al., (2013).

England and Wales continue to imprison the largest number of people in Western Europe, currently at the rate of 133 per 100,000 of the population³³. At the other end of the scale, Norway imprisons just 59 people per 100,000³⁴. It is self-evident that the higher the prison population, the more children and families will suffer the damage caused by imprisonment, including more children being required to be cared for by the State. Although case law has been established in England and Wales for some time to allow non-custodial sentences to be passed or sentences suspended where the person being sentenced is a primary carer for children, in practice the judiciary do not widely use this discretion³⁵.

This paper has identified a gap in research in relation to how well the State as “corporate parent” is meeting the needs and upholding the UNCRC rights of children with imprisoned parents in State care in England and Wales. Evidence given to the 2019 Review conducted by Lord Farmer and the fact that children with parents in prison often seem to be below the radar in terms of being referred to in social work policy documents suggests there is a need for training and awareness-raising amongst professionals. This would enable them to understand the issues more fully and to use that knowledge to meet the needs of children and young people in care who are affected by parental imprisonment more fully. As established earlier, this affects a considerable number of children and young people. Research that engages the young people affected to identify the issues from their perspective as well as from the perspective of those who support them is urgently required to inform the development of good practice.

33 Based on an estimated national population of 60.12 million at end of November 2021 (from Office for National Statistics figures), World Prison Brief, Institute of Crime and Justice Policy Research

34 Based on an estimated national population of 5.41 million at beginning of October 2021 (from Eurostat figures), World Prison Brief, Institute of Crime and Justice Policy Research.

35 Minson, S. (2020).



Alternative care of children and parental incarceration: two topics in direct conflict that threaten the rights of children

Silvia Zega

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The need for protection of children without parental care is gaining attention not only in my country, Argentina, but all over the world. In Argentina, the State has carried out surveys into the situation of children in alternative care programmes, with a view to strengthening public policies, and laws have been passed to prevent violence against children to mitigate the risk of their institutionalisation. The issue of migrant children without parental care has gained enormous visibility around the world.

The Day of General Discussion (DGD) 2021 on Children's Rights and Alternative Care¹ addressed multiple aspects of this issue to promote more respectful responses to children's rights. The above shows that the issue of children in alternative care or in need of alternative care is today a sensitive topic, both for civil society and specialised State agencies. But there is one sector of this group of children that is almost excluded from consideration and whose situation has not been sufficiently included in the alternative care agenda: children in the care of incarcerated persons. Children who not only need alternative care, but who are also off the radar of State protection and, thus, will hardly receive the care they need, without this situation being even considered as a problem.

Children of incarcerated parents: the invisible children in the eyes of alternative care

On several occasions, the highest bodies of the universal system for the protection of human rights have focused on children without parental care. But rarely have the children of incarcerated parents been included in their studies and recommendations.

Few pieces of the universal system's soft law on alternative care warn of the intimate and strong connection between this issue and the incarceration of people with children in their care. In its Resolution No. 64/142², specifically focused on "the protection and well-being of children

who are deprived of parental care or who are at risk of being so", the General Assembly includes cases where the child's sole or main carer may be the subject of deprivation of liberty. In its Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents"³, the Committee on the Rights of the Child re-established the link between these two issues by stating that "in situations where the incarceration or other involvement of a parent with the criminal justice system would result in the children changing home or carer, temporarily or permanently, the Committee recommends that the Guidelines for the Alternative Care of Children be consulted and followed", referring to Resolution 64/142 mentioned above.

In its "Guidelines on Participation and Submissions for the Day of General Discussion 2021"⁴, the Committee stated that "the contribution of individuals or groups whose experience and views are often under-represented, including (...) children whose parents or caregivers are incarcerated or detained (...) are particularly welcomed". But such references – very few, indeed – that connect parental incarceration with children's need for alternative care have not been sufficient to include children of incarcerated parents in the enquiries, analyses and debates surrounding such care. Whenever this issue is addressed, children of incarcerated parents are silenced and invisible and, thus, disregarded.

Incarceration of children's primary carers and the need for alternative care: the hard facts

We know that "children without parental care are more likely than their peers to experience human rights violations, such as exclusion, violence,

¹ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2020.aspx>

² Resolution adopted by the General Assembly on 18 December 2009, 64/142. 'Guidelines for the Alternative Care of Children', para. 48. Available at <https://undocs.org/en/A/RES/64/142>.

³ Committee on the Rights of the Child. 30 September 2011. Report and Recommendations of the Day of General Discussion on 'Children of Incarcerated Parents', para. 42. Available at <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>

No official translation. Translation conducted by Plataforma NNAPes. Available at <http://nnapes.org/docs/COMITE-DE-LOS-DERECHOS-DEL-NI-NO-30-de-septiembre-2011.pdf>

⁴ Guidelines on participation and submissions. No official translation. Available at <https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2020.aspx>

abuse, neglect and exploitation”.⁵ Children whose parents are deprived of their liberty have their lives affected by circumstances in which the issues of alternative care and parental incarceration intersect, thus increasing the aforementioned risks.

Detention

This is the most risky and decisive moment for children’s rights. In addition to the fear, uncertainty and anguish generated by the separation from their carers – which is both unforeseen and forced – there is an immediate risk derived from the lack of regulations regarding children’s care. While children who are present at the time of arrest are usually left in the care of a family member who has not been detained (provided there is one in the vicinity), or a close neighbour, this may not be the best solution in terms of longer-term care provision. If children are not present at the time of arrest, they will be even more alone and lost. In any case, the right of children deprived of parental care and placed in the care of others can be left to the contingent and random goodwill of third parties.

The transition of children to a new care environment and the maintenance of the parent-child relationship

Even when children are taken into care by people who love and care for them, parental incarceration will create new challenges. The imprisonment of one of its members causes difficulties of all kinds in family groups. It will be necessary to arrange for the care of children and face the consequent changes in relationships and routines, the obstacles to contact and communicate with those who are in prison, the material and moral costs of visits, and the total lack of State programmes for children’s psychosocial and economic support, among other problems. On the one hand, this means that the maintenance of affective ties between children and their imprisoned caregivers will be greatly limited. On the other hand, it turns the transition of children to the alternative care environment into an “obstacle race”, in which

they will not always manage to reach the finish line successfully.

The loss of the parent-child relationship: institutionalisation and placement for adoption

The difficulties faced by families who take on the alternative care of children of incarcerated persons – without any State support whatsoever – often end up causing their efforts to fail, and the children to be institutionalised. In other cases, the lack of family members who can take care of the children, their physical remoteness, or their economic or other difficulties make the institutionalisation of children the first option for decision-makers.

In addition to the fear, uncertainty and anguish generated by separation – which is both unforeseen and forced – there is an immediate risk derived from the lack of regulations regarding children’s care.

Although in Argentina the law allows the mother of a disabled child or a child under 5 years old to serve her sentence on house arrest, this alternative is not always applied, since it is optional and not mandatory for judges. Mothers under house arrest, in turn, do not receive any financial support from the State, which in many cases means that this

possibility cannot be sustained. This opens a path that usually ends in the adoption of children. An adoption that is neither required nor desired by the detainees, and in which neither the detainees nor the children have a voice⁶. Children suffer the loss of their family and identity, which could often be avoided with proper support for children, detainees and alternative carers.

Who are the children of incarcerated parents in need of alternative care and how many are there?

Today, no one knows how many children there are who have lost parental care and have been afforded no alternative care – nor where these children are. Neither do we know how many of them were taken in by other family members or by which means. Nor do we know how many did not make it and were left to their worst fate. We do not know how many of those who found an alternative care environment lost their parent-child relationship, nor how many eventually lost alternative care as well. We do not know how many were institutionalised or how many were given up for adoption, how or why. Neither in

⁵ Resolution adopted by the General Assembly on 18 December 2019, 74/133. ‘Rights of the Child’ (paragraph 26). Available at <https://undocs.org/en/A/RES/74/133>

⁶ See the study ‘Maternar a pesar del sistema jurídico. Hija a pesar del adultocentrismo y la estigmatización’ (2021), prepared by the Childhood and Adolescence Area of ACIFAD. Available at <http://acifad.org/jornadas-dimensiones-sociales-de-la-justicia-penal/>

Argentina nor in other parts of the world are such data officially collected.

Research conducted by official and civil society institutions with vast experience in the subject indicate that in my country, there are approximately 217,000 children who have one or both parents deprived of their liberty⁷. Likewise, the 2019-2020 Multiple Indicator Cluster Survey (MICS) on Children and Adolescents⁸ carried out in Argentina by UNICEF in coordination with areas of the national State, included the question on children with at least one parent detained in a penitentiary institution. Although such research has been crucial for the visibility of the problem and is an input of enormous value for the design of public policies, it does not disaggregate how many of these children were in the sole care of the detainees – with the subsequent need for alternative care – because they lived in a single-parent household or because both members of the parental couple have been detained. Year after year, more people,⁹ including more women alone or with their partners¹⁰, are imprisoned in the

region, leaving more and more children without care. And, so far, the State has not provided those children with alternative care.

A penal system that turns a deaf ear to the directives of international organisations and is blind to the rights of children

Based on the input and discussion at the DGD 2011, the Committee on the Rights of the Child made a series of recommendations for the protection of the rights of children of incarcerated parents, urging States to implement measures, such as alternatives to detention for sole caregivers, protocols for arrests when there are children present and when there are not, regular personal relationships and direct contact, protection of privacy from the media, friendly and respectful visiting contexts, use of alternative means of communication, financial support, and training for professionals involved, among others.

In addition, the Inter-American Children's Institute (a specialised agency of the Organization of American States) in conjunction with the NNAPes Platform (Regional Platform for the Defence of the Rights of Children and Adolescents with Adult Parents Deprived of Liberty) prepared detailed technical guidelines for member States¹¹. These cover in detail many aspects relating to the rights of children with incarcerated parents, providing explicit guidelines for action. As regards the relationship of children with the penal system, Recommendation No. 3, paragraph 3, stands out, referring to the need to gather information at the time of detention about whether the people involved have children that they are responsible for, and about their family situation and how parental care will be resolved during the period of detention. Recommendations Nos. 4 on the protection of children at different stages of the process (especially during visits); 10 on economic, social and legal support for families of detained persons; and 12 on alternative care for children separated from their parents due to detention are also noteworthy.

In 2019, the Inter-American Court of Human

7 Barómetro de la Deuda Social de la Infancia del Observatorio de la Deuda Social Argentina, Universidad Católica Argentina and Church World Service Latin America and the Caribbean. Cadoni, L., Sánchez, M.E. and Tuñón: Las múltiples vulnerabilidades que afectan especialmente a NNAPes. Informe especial 2021 [Particular Challenges Faced by Children with Incarcerated Parents. Special Report 2021]. Available at <http://wadmin.uca.edu.ar/public/ckeditor/Observatorio%20Deuda%20Social/Documentos/2021/2021-OB-SERVATORIO-SPECIAL-REPORT-PARTICULAR-CHALLENGES-FACED-BY-CHILDREN-WITH-INCARCERATED-PARENTS.pdf>; Cadoni, L. Rival, J.M., Tuñón: Infancia y Encarcelamiento. Condiciones de Niñas, Niños y Adolescentes cuyos padres o familiares están privados de libertad en la Argentina. Informe especial 2019 [Childhood and Incarceration. Living conditions of children and youth with incarcerated parents in Argentina. Special Report 2019]. Available at http://wadmin.uca.edu.ar/public/ckeditor/Observatorio%20Deuda%20Social/Documentos/2019/Childhood%20and%20Incarceration%20Special%20Report%202019-english%20version_web.pdf; Argentine Criminal Prosecutor's Office, World Church Service Latin America and the Caribbean Regional Office, ACIFAD (Asociación Civil de Familiares de Detenidos), and UNICEF (United Nations International Children's Emergency Fund) (2019): Más allá de la prisión. Paternidades, maternidades e infancias atravesadas por el encierro. Available at <https://www.ppn.gov.ar/mas-alla-de-la-prision.pdf>

8 Available at <https://www.unicef.org/argentina/media/12071/file/MICS%202019-2020.pdf>

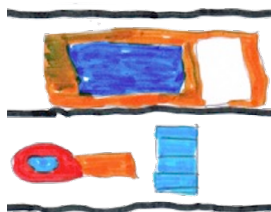
9 From 2000 to 2017, the world prison population grew by approximately 24%, which is about the same as the increase in the world's general population. But in South America, this growth was 175%. Source: Penal Reform International, Thailand Institute of Justice (TIJ). (2018). Global Prison Trends 2018. Available at: https://cdn.penalreform.org/wp-content/uploads/2018/04/PR1_Global-Prison-Trends-2018_EN_WEB.pdf

10 Walmsley, R. (2017). World Female Imprisonment List, fourth edition. World Prison Brief - The Institute for Criminal Policy Research (ICPR) at Birkbeck, University of London. (www.icpr.org.uk) Available at: http://fileservr.idpc.net/library/world_female_prison_4th_edn_v4_web.pdf and Walmsley, R. (2018). World Prison Population List. World Prison Brief - The Institute for Criminal Policy Research (ICPR) at Birkbeck, University of London. (www.icpr.org.uk) Available at:

https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf

11 (2019) Guidelines to Promote and Comprehensively Protect Children and Adolescents Whose Primary Carers are Incarcerated. Technical Guidance. Available at: <http://www.iin.oea.org/pdf-iin/publicaciones/2019/Guidelines%20to%20promote%20and%20comprehensively%20protect%20-%20User%20friendly%20version.pdf>

Rights entered judgement against Argentina in the case “López et. al. v. Argentina”¹², where children appear as indirect or collateral victims of the criminal system’s actions against their parents. The sentence was based, among other grounds, on the State’s responsibility for the transfers of persons deprived of their liberty, two of whom had minor children, to prisons between 800 and 2000 km away from the place of residence of their families and the place where the criminal enforcement authorities and their defence counsels were based. In relation to the children – who were virtually unable to maintain personal contact with their parents – the court found that the State was responsible for violating their right to special protection under Article 19 of the American Convention on Human Rights.



Despite the firmness of the recommendations and directives, the Argentine penal system does not seem to consider the right of children of incarcerated parents to maintain the parent-child relationship and to alternative care, nor its duties in this regard as a State body.

Opening a path of hope: some advances made in Argentina

However, some facts demonstrate that the situation has begun to change. In a context in which NGOs have strengthened dissemination, visibility and advocacy actions, some initiatives linked to the judicial branch have emerged that promise a favourable change:

1.) In 2020, the Inter-institutional Prison Monitoring System¹³ submitted to the Argentine Supreme Court of Justice a bill on the actions to be taken by national criminal judges regarding children and adolescents in the exclusive care of detainees. The proposed bill establishes that at the time of the arrest, the criminal judge must ascertain whether the arrested person is in the exclusive care of children or disabled persons. If so, s/he shall ensure that the children are placed in the care of a responsible adult appointed by the

detainee and shall then give proper cognisance to the competent child protection authorities so that they can aid them and conduct proper monitoring.

The bill takes as a model a regulation issued by the Federal Court of Appeals in and for San Martín and approved by the Argentine Supreme Court (Acordada 40/1997)¹⁴, which is only mandatory for criminal judges of that jurisdiction, and which seeks to guarantee the right of these children to have an adult responsible for their care from the very moment of detention. This Court Regulation was recognised as a good judicial practice during the Committee on the Rights of the Child Day of General Discussion 2011¹⁵.

Throughout the years of application, experience has shown that this regulation affords children effective protection at the time of their parents’ arrest. And it does so by simply imposing on the judges within its jurisdiction three main duties: the duty to find out whether the detainees have children in their exclusive care, the duty to ask them in whose care they wish their children to remain, and the duty to give subsequent cognisance to the competent child protection authorities so that they can provide the assistance needed.

2.) In July 2016, the Ministry of Protection of the Rights of Children, Adolescents and Disabled Persons of the City of Buenos Aires¹⁶ established six strategic management principles¹⁷. One of these principles is aimed at “children and adolescents whose primary adult carers are deprived of liberty”, which means not only the intervention of the officers of that Public Ministry, but also the internal coordination with the areas of investigation, training, dissemination and monitoring. The objective is to guarantee the rights of these children and their access to public policies that contribute to their insertion in the

¹² Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_396_esp.pdf

¹³ The main objective of the Inter-institutional Prison Monitoring System is to encourage and develop actions aimed at ensuring that the human rights of persons deprived of their liberty are respected in practice. It is made up of national representatives of the judiciary, the Public Prosecutor’s Office, the Ministry of Defense, legislative bodies responsible for monitoring human rights in prisons, and NGOs with a recognised track record in the field.

¹⁴ Available at: <https://www.csjn.gov.ar/bgd/verMultimedia?data=4429>

¹⁵ Robertson, O. (2012). Collateral Convicts: children of incarcerated parents. Recommendations and Good Practice from the UN Committee on the Rights of the Child Day of General Discussion 2011, page 11. Quaker United Nations Office. Available at: https://quino.org/sites/default/files/resources/ENGLISH_Collateral%20Convicts_Recommendations%20and%20good%20practice.pdf

¹⁶ This Ministry is part of the Judiciary of the City of Buenos Aires, and its main mission is to control the legality of proceedings, promote access to justice, and the respect, protection, promotion and enforcement of the rights and guarantees of children, adolescents and users of mental health services.

¹⁷ <https://drive.google.com/file/d/1oQu-oMH3QkkQgrx6ypbFU-VrLeYGh2Xod/view?usp=sharing>

community, ensuring the right to be heard and generating spaces for reflection and support to foster the relationship with their detained parents. To this end, this body seeks to facilitate children's access to rights (education, health, identity), provide their families with the necessary support and tools, and train prosecutors and security forces in detention procedures and/or visits where children are present so that they are treated with dignity and respect.

3.) Whenever the Federal Court of Appeals in and for the City of Rosario denies house arrest to a person in care of children, it adopts measures aimed at ensuring housing, protection and development of those children¹⁸. These are obligations imposed on administrative bodies responsible for child protection, education, health and social development, or local civil society organisations, which must report on a quarterly basis on the assistance provided and its effects, coordinating activities among themselves. The requirements include information on the new carers and living conditions of the children placed in their care, psychological and social support, food provision, transfers for frequent visits to incarcerated parents, among others. The measures are aimed at providing children and their new carers with tools so that they can lead a dignified life in their current environment.

4.) An initiative that has not been undertaken by the judiciary but in which it is involved is the investigation to be conducted by ACIFAD (Civil

Association of Relatives of Detainees) and the Provincial Memory Commission (an autonomous public body that promotes and implements public policies on memory and human rights). The main objective of this survey is to identify the judicial and administrative circuits that restrict the contact of imprisoned mothers with their children, which, based on previous studies conducted by this NGO, often lead to the institutionalisation of children and the irrevocable loss of the bond with their mothers, as indicated in paragraph 3.3.

Conclusions

The State is responsible for the protection of all children in need of alternative care. But it is more accountable when it is the State itself that separates children from their primary carers, leaving them without parental and alternative care. The harm caused by the penal system is, at best, contained by people of goodwill who take in the children and provide them with alternative care, even though they are utterly alone and receive no support whatsoever.

Although legitimate, criminal court decisions to incarcerate persons with children in their care not only affect those persons but also their children, sometimes with a catastrophic impact. And despite being responsible for such forced separation, the State fails to take the appropriate measures through its penal system to mitigate the situation of neglect in which it has placed children. However, some of the experiences herein described bring hope that something is beginning to change. Children whose incarcerated parents are their sole or primary carers, and who are therefore in need of alternative care, are looking forward to it.

¹⁸ As an example: Judgment entered by the Federal Court of Appeals in and for the City of Rosario (CFAR) in the case 'Castelli, Natali'. Vote of Judge Anibal Pineda, whereas clauses 10-14. Available at: https://drive.google.com/file/d/1a40vr97lQVS2oGuo_N8XDws2js7n202/view?usp=sharing



Children with parents in prison as rights holders: Avoiding separation, mitigating harm, upholding their best interests

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Children with parents in prison may be in formal or informal alternative care and their specific situations can give rise to specific risks and harmful impacts. This article looks at international standards that guide States in upholding the rights of children in this particular circumstance. It is important to recognise that children in alternative care who have a parent in prison are rights holders, just like all other children. This article focuses on where international standards are most specific about their particular situation, but all aspects of international human rights law apply, for example, in regard to rights to food, health, education, freedom from torture, etc¹.

The Guidelines for the Alternative Care of Children (Guidelines) adopted by the United Nations General Assembly define alternative care as:

- (i) Informal care:** any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body;
- (ii) Formal care:** all care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures².

The distinction in the Guidelines, therefore, lies primarily in who made the decision rather than who does the caring. Children with a parent in prison may be in formal or informal care with family members, or in informal care with family members, or in formal care in family settings but not with relatives, or in formal care in institutions.

¹ For an outline of international standards relating to the rights of children with parents in criminal justice systems see Halton, L. and Townhead, L. (2020). *Children of Incarcerated Parents: International Standards and Guidelines*. Quaker United Nations Office, Geneva. Available at <https://quino.org/resource/2020/3/children-in-carceral-parents-international-standards-and-guidelines>

² UN Guidelines for the Alternative Care of Children, A/RES/64/142 of 24 February 2010, para. 29(b)(i) and (ii)

Overarching principles

Best interests of the child – The primacy of considerations of the best interests of the child means that their rights and views should be an integral part of any decision surrounding their care³. Considering the best interests of the child also requires decisions to be taken on a case-by-case basis.

Maintenance of family care – The Convention on the Rights of the Child states that the children should “grow up in a family environment, in an atmosphere of happiness, love and understanding”⁴. Family settings that enable this and the “full and harmonious development” of the child are to be supported and maintained. This is echoed in the Guidelines:

...efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members⁵.

Non-discrimination – Non-discrimination is a grounding principle throughout international human rights standards, and the multiple and intersecting forms of discrimination faced by each child with a parent in prison who are in alternative care should be recognised and addressed. The assessment of whether to place a child in alternative care and the treatment of that child in alternative care should not allow for any discrimination because the child’s parent is in prison. The Guidelines state:

Special efforts should be made to tackle discrimination on the basis of any status of the child or parents, including poverty... and socio-economic stigma, and all other statuses and circumstances that can give rise to relinquishment, abandonment and/or removal of a child⁶.

Consultation with the child – Children who are or who may be placed in alternative care should be consulted with regarding their care in a way

³ UN Convention on the Rights of the Child, Art. 3

⁴ Ibid., preamble

⁵ UN Guidelines for the Alternative Care of Children, para. 3

⁶ Ibid., para. 10

that is appropriate for their age and maturity⁷. Consultation with children is not a one-off event but should be ongoing given that there may be multiple decision-making points and a child's views may change as the situation develops.

Access to information – Children, parents and guardians should be fully informed at all steps of the decision-making process⁸. Parents in prison should also have timely access to all relevant information⁹.

Specific treatment in international standards

In addition to the broader guidelines and legal standards outlined below, the Guidelines contain specific provisions for children with parents in prison who are facing alternative care:

When the child's sole or main carer may be the subject of deprivation of liberty as a result of preventive detention or sentencing decisions, non-custodial remand measures and sentences should be taken in appropriate cases wherever possible, the best interests of the child being given due consideration. States should take into account the best interests of the child when deciding whether to remove children born in prison and children living in prison with a parent. The removal of such children should be treated in the same way as other instances where separation is considered¹⁰.

Prevention of separation

The emphasis on the use of non-custodial measures to prevent separation where in the best interests of the child is echoed in a developing presumption against deprivation of liberty for those with caring responsibilities for children. Prevention of separation through the use of non-custodial measures has been highlighted by multiple standard-setting bodies¹¹. The Global Study on Children Deprived of Liberty recommends clearly a "presumption against a custodial measure or

sentence for primary caregivers"¹².

This presumption is part of upholding the clear line set out in the Guidelines that:

Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child, in keeping with the assessment foreseen in [these Guidelines]¹³.

In relation to children with parents facing prison, preventing separation through a presumption for non-custodial measures means ensuring:

- existence of non-custodial sentencing disposals
- sentencing guidelines including this presumption
- inclusion of best interests of the child assessments in sentencing decisions
- information and training for sentencers.

The Guidelines and other sources of guidance and standards are clear that prevention of separation is not only about decisions taken in moments of crisis but also policies and services that enable children to remain in the care of their parents through ongoing support. For example, in relation to poverty the Guidelines say:

Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family¹⁴.

A similar position should be taken in relation to parental incarceration: it should not be the only justification of removal of a child from parental care but can be seen as a signal for appropriate family support. The Guidelines emphasise the importance of promoting parental care¹⁵.

⁷ Ibid., para. 57

⁸ Ibid., para. 64; UN Convention on the Rights of the Child, Art. 9(4) also explicitly covers access to information for children separated by parental imprisonment.

⁹ UN Guidelines for the Alternative Care of Children, para. 65

¹⁰ Ibid., para. 48.

¹¹ For full listing of sources from UN and other international bodies see Halton, L. and Townhead, L. (2020). *Children of Incarcerated Parents: International Standards and Guidelines*. Quaker United Nations Office, Geneva.

¹² Nowak, M. (2019). *The United Nations Global Study on Children Deprived of their Liberty*, Chapter 10, Section 5, para. 6.

¹³ UN Guidelines for the Alternative Care of Children, Ibid., para. 14

¹⁴ Ibid., para. 15

¹⁵ Ibid., para. 32

Specific measures for children in informal care

As noted above, many children with a parent in prison are in informal alternative care, for example with members of their extended family. Whilst these care arrangements are not mandated by the State, the Guidelines recommend that they should be recognised by the State to ensure that appropriate benefits are available and to ensure that appropriate conditions of care are met¹⁶.

Mitigating the possible harms of separation when children with parents in prison are in alternative care

Maintaining Family Contact

Where a child is separated by parental incarceration, they have a right to family life and contact.¹⁷ This is not limited to those children that remain in family or kinship care and includes continued contact with their parent in prison, where this is in the child's best interests. The significance of understanding family contact as a right is reflected in the provisions in both the Bangkok Rules on the Treatment of Women Prisoners and the Guidelines that prohibit restriction of family contact as a punishment¹⁸.

Ensuring that children can maintain family contact despite being in alternative care and despite their parent being in prison requires the support of those caring for the child and those responsible for prison administration. The Guidelines are explicit about facilitating and encouraging family contact¹⁹ and note the particular situation of children with a parent in prison:

*States should pay special attention to ensuring that children in alternative care because of parental imprisonment ... have the opportunity to maintain contact with their parents and receive any necessary counselling and support in that regard*²⁰.

¹⁶ Ibid., para. 56; 76-79

¹⁷ UN Convention on the Rights of the Child

¹⁸ UN Guidelines for the Alternative Care of Children, para. 96; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 23

¹⁹ UN Guidelines for the Alternative Care of Children, para. 81

²⁰ Ibid., para. 82

They are also clear that the role and responsibility of those tasked with providing alternative care includes “[h]elping the child to keep in touch with [their] family, when appropriate”²¹. For children with a parent in prison, this should include facilitating visits and frequent communication by phone and in writing.

The Guidelines also highlight the importance of training for all those providing alternative care on the “specific vulnerability of children in particularly difficult situations”²². Placement in alternative care due to parental imprisonment should be considered a “particularly difficult situation” and specific training should be developed. This could draw on research on the impact of parental imprisonment on children and provide practical guidance on navigating communication with someone in prison and arranging prison visits. Such training should signpost alternative care providers to organisations providing specialist support to children with a parent in prison.

Information sharing and coordination between relevant authorities to ensure support

In addition to the overarching principle of access to information mentioned above, it is important that there is coordination and coherence amongst relevant State authorities (and civil society) to enable effective care and support for children in alternative care²³. In relation to children in alternative care with a parent in prison, this would need to include prison authorities to ensure a clear flow of information for the parent and for the child.

Return to family care – promoting family reintegration

The Guidelines see return to family care as preferable when in the best interests of the child and set out steps to support family reintegration²⁴, including:

*Regular and appropriate contact between the child and his/her family specifically for the purpose of reintegration should be developed, supported and monitored by the competent body*²⁵.

²¹ Ibid., para. 104 (g)

²² Ibid., para. 115

²³ Ibid., para. 70

²⁴ Ibid., para. 49-52

²⁵ Ibid., para. 51

If family reintegration and a return to parental care is planned to coincide with release from prison, specific measures should be taken to increase contact between the child and parent and, where appropriate, for this to include contact outside the prison.

The Guidelines draw attention to the importance of planning for care provision and permanency. It is particularly important that imprisonment is not a barrier to receiving timely information about care and permanency planning given the potential for and impact of the loss of parental rights.

The Guidelines place significant emphasis on “the nature and quality of the child’s attachment to [their] family” as well as factors including community, sibling relationships and the capacity of the family to safeguard the child’s wellbeing²⁶. Given this central role of the attachment to family, it is critical that the barriers that imprisonment presents to creating and maintaining family bonds are removed to the maximum extent possible. The impact on family bonding created by prison systems should not be a reason not to return a child to family care or to presume that a return to family care is not possible.

²⁶ Ibid., para. 62

The importance of a child being able to bond with their parent in prison is noted in the Global Study on Children Deprived of Liberty²⁷. The international standards on maintenance of family contact should be applied both to uphold the right to family contact and to facilitate a family attachment that would enable family reunification on release from prison where appropriate.

Conclusion

The existing international standards provide overarching principles and aspects of specific guidance to States on upholding the rights of children with a parent in prison who are in alternative care or for whom alternative care is being considered. These standards should be incorporated into relevant policy and practice, drawing on the expertise of organisations specialised in working with children with parents in prison and those that work with children in alternative care.

²⁷ Nowak, M. (2019), Chapter 10, Section 5, para. 15.



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